

MAINE STATE HARNESS RACING COMMISSION  
MINUTES OF MEETING  
MARCH 11, 2021  
HELD ONLINE VIA ZOOM APPLICATION

Commission Members Present: Michael Timmons, Chair, William McFarland, James Kelley, Jr., Richard Shiers, and Edward Kelleher

Commission Members Absent: None.

Staff Members Present: AAG, Ron Guay, AAG, Henry Jennings, Carol Gauthier, Joy, Bonenfant, Miles Greenleaf, Jaime Wood, and Dr. Zachary Matzkin

1. **Call the Meeting to Order and Introductions:** Michael Timmons, Chair
2. **Review and Approval of Minutes**  
Commissioner Kelley made a motion to move the minutes of February 24, 2021.  
Commissioner McFarland seconded. Vote 5-0.
3. **Request to Modify the 45-Day Rule.** Commission rule CMR 01-017, Chapter 7, Section 1 requires horses that are entered to race to have a satisfactory charted line within the last 45 days. The Maine Harness Horsemen's Association is requesting that the Commission modify the requirement for the first 45 days of the season.  
Commissioner Timmons asked Debbie Patterson to speak on this matter. Ms. Patterson stated what they are asking to take out the off season. Last year the last day of racing was November 28, 2020 so basically allowing the horsemen that 45 days which most of them are going to race before that anyway. So, if you raced the last day of racing last year, you would have until May 26 before you need to qualify. If Bangor was your last day of racing last year which was November 6, 2020 then you would have until May 3<sup>rd</sup>. She stated that the MHHA has asked for this the last three years. The Commission was in support of this request. Commissioner McFarland made a motion they adopt the 45-day rule and remove the off season. Commissioner Shiers seconded. Vote 5-0.
4. **Submission of the Maine Harness Horsemen's Association Annual Budget.** In order to be eligible to receive funding through the purse accounts under 8 M.R.S. § 272-B, a state-wide association of horsemen is required to submit to the Commission: 1) a copy of the annual budget approved by a majority of members, 2) a letter from the officers certifying that a majority of members approved the budget, and 3) a letter from the officers indicating the date on which the vote was taken and attesting that the vote was taken in accordance with the association bylaws.  
Commissioner Timmons asked Debbie Patterson to speak on the MHHA Annual Budget. Ms. Patterson stated she submitted letters and minutes from the MHHA annual meeting including the budget. Commissioner Kelley stated under the income line for racetrack and Sire Stakes funding if it would be possible to separate those two figures. Ms. Patterson stated she would resubmit that information. Henry Jennings stated that the statute requires the Commission to approve MHHA's eligibility to receive funds. Commissioner Kelleher moved the motion to recognize that the association is eligible because it has fulfilled its requirements of submitting those three documents. Commissioner McFarland seconded. Vote 5-0.

5. **Consideration of an Advisory Opinion.** The Department is requesting that the Commission issue an advisory opinion relative to the conduct of licensees who are not on the grounds of a licensed association. The conduct in question involves licensees as they interact with other licensees in the context of harness racing related activities. Over the last few years, a variety of concerns and allegations have surfaced about threats, vandalism and harassment involving licensees at stables and training centers. The Department is requesting that the Commission issue an opinion as to whether such conduct constitutes grounds to deny or suspend a license pursuant to CMR-01-017, Chapter 1, Section 10.1-A. For instance, Section 10.1-A.3.C states that grounds to deny a license exist if a licensee displays conduct that undermines the integrity of Maine harness racing by negatively impacting the health and welfare of [participants].
- Henry Jennings has received a number of inquiries about people being threatened by other horsemen. This is concerning to him. AAG, Guay stated they are weighing whether they should file complaints against individuals. It's not clear to him either in the rule or the statute whether or not at what point that conduct unbecoming in the industry where that ends. He read the rule in Chapter 1, Section 10, subsection 8 as "A person whose conduct, reputation, experience or character may adversely reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of a race meeting;" He stated they have two kinds of actions. There are violations of rules and there's licensing laws. A violation of the law that has to happen at the licensed facility. Licensing occurs once a year. Let's say they have information. If a licensee is up for renewal is this the kind of stuff that you would consider under the licensing section. If people are threatening other people in the harness racing industry, is that the kind of stuff if they bring before you would say hey were not sure this person has a good character or a good reputation that they should have another license. Would you consider Facebook and text as evidence of a bad reputation and potentially not licensing them? Commissioner Shiers stated how can they prove who put it on. AAG, Guay stated what if they could prove. If it is none of their business that people are harassing each other outside of the actual race format, then they need to know that. Commissioner Shiers stated as a commissioner his position is this, they make all their decisions based on facts and they do not chase rumors, innuendos, and hearsay. Someone's been aggrieved on personal property how do they approve it. He doesn't know. He thinks that is out of their jurisdiction. AAG, Guay stated how do we interpret the rule that says, "the Commission may suspend, revoke, or refuse to issue or deny a license upon a finding that a person whose conduct, reputation, experience or character may adversely reflect on the honesty and integrity of horse racing". Commissioner Kelley stated the way he sees it if somebody puts it in writing in a text or on Facebook it's pretty easy to identify that person that post it. For someone else to do it, that person would have to take that person's phone. If there's proof, and these rules that we operate under like the one that he just cited in Chapter 17 under violations, conduct detrimental to harness racing. Mr. Jennings stated that when you look at whether somebody's qualified for a license. You look at are they suspended in another state. Do they have a criminal history? Jurisdictionally let's look at the fairs. There are at least 3 fairgrounds that also act as training centers, but historically they viewed their jurisdiction to the 5 to 9 days in which that fair operates. Commissioner Kelley stated that's not clear to him that's what the rule says that it's only restricted to while the fairs are operating. Commissioner McFarland stated they were a party to all that you are talking about at one point in time. The advisory they got back from the attorney generals office it was that just what's been said. As far as licensing, it was felt that they only had the authority like during the days that Windsor Fair was licensed to have races. After that they were to be treated just like any other individual track, privately owned. Charles Eaton stated at Cumberland, First Track leased Cumberland Fairgrounds. Theoretically they leased only inside the fence of the paddock and the grandstand and the racetrack. The barn area is separate, and they do not have control over that it is not theirs. As an example, he has horses at the fairgrounds. He could walk from his barn go into the paddock and work. He makes a determination, and this has happened to other judges on this call now. He has been threatened, his animals have been threatened with death. Many times, over judgement he's made as a judge he walks back to his barn and he has no protection. Is that what you're saying. AAG, Guay stated he would not take that position. However, he would not want to bring a case if that is the view of the Commission. He doesn't interpret the law.

He looks at the law and he looks at the rule. They have been struggling. The new social media, this stuff wasn't around 20 years ago. It is a different world now. How do they adjust their enforcement with this new world? Debbie Patterson stated her comment was the social media thing. She represents the MHHA Board of Directors. When she puts something on her personal page, she is still representing the Board. They can fire her if some of the stuff that she was doing on social media looked bad on them because it does say where she works. Commissioner Timmons stated as far as the fairgrounds itself and issues at this time after hearing what Judge Eaton had to say there's a new president on board soon in a couple of months will be coming in front of the membership and be named the president of Cumberland Fair. If something very serious happens on these fairgrounds the Cumberland Police Department has been notified on more than one occasion and it can be dealt with locally. Nobody should be able to be threatened, he doesn't care what their title is. If the people are in the barn area, and they enter their horses to race and those horses are in to race and issues come up that might be a reflective of bad decision, bad character, or illegal. Are you saying that administration of items in Augusta or the Maine Harness Racing Commission wouldn't be responsible to take that on even if the local people took it on as well, and said they have a procedure and they need to follow it; and if Mr. Eaton is being threatened whomever that individual is and that name comes forward and they're an owner, trainer, or driver it wouldn't make a difference to him. He would call the local police and have them arrested or whatever they need to do. However, when it comes on the other hand and it has to do with harness racing and something negative he believes it needs to be brought before the executive director of the Commission. AAG, Guay stated it is a very complicated jurisdictional question. You need to have evidence. Commissioner Kelley stated the example that Judge Eaton cited in his view if a person in the barn area at the very least at any licensed racetrack in the State of Maine threatens an official that is due course of license suspension, and whatever the penalty may be. He would not consider the barn area being outside of harness racing. Commissioner Shiers stated he agreed with Commissioner Kelley that at any time one of their licensed officials gets threatened anywhere that is under the jurisdiction of this Commission. They license that person and they should bring it right to them and they should be addressing it. Commissioner McFarland stated that he concurs with what Commissioner Kelley and Commissioner Shiers said. Being a race director and being familiar with Windsor Fairgrounds, he won't say that he's had some of the problems that Mr. Eaton just spoke of, but he absolutely agrees that all of the officials should be protected from people who aggravate, distort, threaten and so on. That's paramount to having any kind of integrity in this industry whether you like them or not. We're talking about revoking, suspending, refusing or whatever licenses of individuals based on an incident, an activity or an ongoing situation. He does believe that the executive director should have the authority to look into what the facts are and then determine what direction he should take whether it's suspension or revulsion. They always have the right to appeal that to them. So, in line with if they're going to have any integrity in this industry and stop some of the stuff that is happening then that needs to be paramount to what they do here as far as direction. He knows that the fairs would support that. He doesn't like the fairs being singled out here. Commissioner Kelleher stated he agrees with the comments. Commissioner Timmons stated he feels a little bit bad that an official would be treated that way, and if that's the case and when it happens it needs to be brought forward to Mr. Jennings. Mr. Jennings stated he will try to capture the tone of this discussion in a draft advisory opinion and send it out for people to review. Would that be the next step? AAG, Guay stated he doesn't think so. What he is hearing is, that they need evidence is the first thing. He explained the advisory opinion. He would have to describe facts and what they're seeing, instead is patterns. He could write an advisory opinion that says if somebody post something on Facebook because of x, y, and z would that be a violation of Chapter 1, Section 10.8. Well the problem would be that he would have to write an advisory opinion for each little twist in the fact. There are very few agencies that allow for licensing actions based on reputations. Harness Racing is one of them, but they haven't.

## **6. Consent Agenda:**

- a. RE: Adam Gray, Complaint Number 2019 MSHRC 15.** Trainer Adam Gray has tentatively agreed to settle Complaint Number 2019 MSHRC 15 arising from a horse

death on August 5, 2019 in which Gray acknowledged administering two injections to the horse "Metalicana" on the same day it was entered to race.

Mr. Jennings stated there was a horse that died back in 2019. It died on the day that it was in to race. It resulted in quite a far-reaching investigation that went beyond the trainer involved and a particular veterinarian in the state. The point of this particular case is the only violation that arose that there was evidence for was that the horse had received 2 injections on race day. That was the only violation they brought forward. They attempted to resolve that case with a consent agreement. The Commission gets to decide whether to accept the consent agreement or not. He will say when a horse dies that's a part of the harness racing industry is in to go or otherwise is known to be a harness racing horse. The department is basically taking the position that they have to be aggressive about looking into all of them and holding people accountable for their conduct. Commissioner Timmons stated that this situation seems to him like a harness racing commission responsibility to deal with and he just wanted to have the consent agreement before that fact after you get the information. He's surprised that you had a consent agreement and didn't involve the Commission prior to that. He doesn't know and he's directing it to him and if you're the one that had the consent agreement and carried it out and brought forward this information. And in the consent agreement itself unless the Commission does something different not allow at this point after doing this any room for any additional facts or finding or anything else to discuss. AAG, Guay stated in terms of prosecuting they took a look at not necessarily what the consequence was, and everyone would agree that it was a very bad outcome. They were not able to develop evidence of any rule violations other than the ones cited in the consent agreement, so that's why the consent agreement is written the way it is. He thinks a lot of people said what happened. As prosecutors they look at what did someone do wrong. What they were able to prove and frankly it was because the licensee in this case was willing to make certain admissions. They take a look at the consequences and those people who did what suffered the consequences. Consent Agreements are handled by different agencies differently. Here some agencies typically because there are so few licensees they're very difficult to do. You don't have that, so the reason why that's important is until you prove a consent agreement theoretically the investigations are confidential. So, they've used this individuals name at this point and from a purist standpoint they would be presenting this consent agreement without publicly without the name of the licensee. With that said most agencies look at the staff to work out the best deal and he assures them that this was extremely well investigated. This was a multi agency cooperative. There was a specialized investigator with another agency that got involved in this. Mr. Jennings and the staff did a very thorough within their limits and by tapping into resources with other agencies. Commissioner Timmons stated this was a very difficult thing. The thing he has a problem with is finding of facts and you said you went through all that. He has had no communication with the Commissioners except for yesterday. AAG, Guay stated that's part of the problem. A consent agreement if you don't approve it then you guys are going to sit as judges. That's why you don't have communication. Commissioner Kelleher moved to accept the consent agreement. Commissioner Timmons asked for a second. The motion failed. Commissioner McFarland made a motion to not accept this consent agreement and move this item to additional hearing at a future date. Commissioner Kelleher seconded. Commissioner Timmons asked for any discussion. Commissioner Kelley agreed with Commissioner McFarland. AAG, Guay stated in fairness to Mr. Gray if they are going to have a hearing, Mr. Jennings and he cannot have a discussion about his case unless Mr. Gray is present. Commissioner Timmons asked for a vote. AAG, Guay called the roll call vote.

## RECORD OF ROLL CALL VOTE

**Motion: To not accept the proposed consent agreement regarding Adam Gray.**

<b>Michael Timmons</b>	<b>YEA</b>
<b>William McFarland</b>	<b>YEA</b>
<b>James Kelley, Jr.</b>	<b>YEA</b>
<b>Edward Kelleher</b>	<b>YEA</b>
<b>Richard Shiers</b>	<b>NOT PRESENT</b>

**Motion carried 4-0.**

- 7. Review of the Rulemaking Hearing Record for CMR 01-017, Chapter 13.** The Commission will review the hearing record for Chapter 13 and provide direction to the staff relative to changes to the proposed amendments it believes are warranted. Commissioner Timmons asked Mr. Jennings to proceed. Mr. Jennings stated Section 1 he proposed to delete this section. The Commissioners agreed to delete this section. Mr. Jennings moved to Section 2 regarding the State Steward. The Commissioners agreed to move forward with this change. Mr. Jennings moved to Section 3 regarding the pari-mutuel directors. The Commissioners agreed with Mr. Jennings on this change. Mr. Jennings moved to Section 11 regarding the minimum wagers. The Commissioners agreed with this change. Mr. Jennings moved to Section 12 regarding the pari-mutuel wagering on other forms of payment. The Commissioners agreed with this change. Mr. Jennings moved to Section 38 regarding the error in final posting. The Commissioners were in an agreement on this change. Mr. Jennings moved to Section 41 interstate simulcasting. The Commissioners were all in agreement with this change.
- 8. Other Business**  
None.
- 9. Public Comment**  
Commissioner Timmons asked for public comment. Michael Cushing, President of the horsemen's association stated his board were all in agreement that the increased cost of putting on a racing production on a daily basis there's been sacrifices made by everybody to try to ease some of those cost burden's on host tracks mostly the fairs. What they had thought about that would be cutting expenses for these host tracks would be if the State Racing Commission actually paid and hired at least one judge probably the presiding judge at each venue. He discussed this with Mr. Jennings briefly and he said it wasn't within his purview. It would be at the racing commissions request to ask him to look into it. It would relief the burden on these entities that are putting on a show. Commissioner Shiers agreed with what Mr. Cushing stated 100 percent. Commissioner Kelley stated it wouldn't do any harm to have Mr. Jennings look into it if that is something the Commission wants to pursue.
- 10. Schedule of Future Meetings:**  
March 19, 2021
- 11. Adjourn**  
12:38 p.m.